

**Ted Hicks and Associates, Inc. and United Brotherhood of Carpenters and Joiners of America, Local 1098.** Case 15-CA-6205

September 30, 1977

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND MURPHY

Upon a charge duly filed by United Brotherhood of Carpenters and Joiners of America, Local 1098 (hereafter the Union), the Regional Director for Region 15 of the National Labor Relations Board, acting on behalf of the General Counsel of the Board, on February 15, 1977, issued a complaint alleging that Respondent, Ted Hicks and Associates, Inc., violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. (29 U.S.C. § 151, *et seq.*) Respondent filed an answer to the complaint in which it admitted certain allegations of the complaint and denied others, including all those charging it with the commission of any unfair labor practices.

On April 11, 1977, the General Counsel, the Union, and Respondent entered into a stipulation in which they agreed to certain facts relevant to the issues in this proceeding. They also agreed to waive a hearing before an Administrative Law Judge, the issuance of an Administrative Law Judge's Decision, and the presentation of any evidence other than that contained in the stipulation and the exhibits there referred to. By order dated May 6, 1977, the Board approved the stipulation and transferred the proceeding to the Board. Thereafter, the General Counsel, the Union, and Respondent filed briefs with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the briefs, and makes the following findings and conclusions:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE EMPLOYER**

Ted Hicks and Associates, Inc., Respondent in this proceeding, has been at all times material a corporation duly organized under the laws of the State of Louisiana with its principal place of business at

Baker, Louisiana, where it has been engaged in the general contracting business. Respondent annually performs services within the State of Louisiana valued in excess of \$50,000, for the State of Louisiana, which entity annually purchases goods and materials valued in excess of \$50,000, directly from points located outside the State of Louisiana. Accordingly, in agreement with the stipulation of the parties, we find that Respondent has been at all times material an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act. It will therefore effectuate the policies of the Act to assert jurisdiction in this proceeding.

**II. THE LABOR ORGANIZATION**

It is stipulated and we find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE UNFAIR LABOR PRACTICES**

At all times since on or about October 11, 1974, and continuing at least until June 1976, the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the appropriate unit comprised of all carpenters employed by Respondent on its construction projects located within the territorial jurisdiction of the Union. On October 11, 1974, Respondent signed a prehire memorandum agreement with the Union that it would "comply with, abide by, and be bound by all the provisions" of the March 28, 1969, collective-bargaining agreement between the Union and the Baton Rouge Chapter, Associated General Contractors of America, Inc. (hereafter AGC).<sup>1</sup> While Respondent is not a member of the AGC, the memorandum agreement stated that Respondent agreed to be bound by "any modifications, extensions, or renewals" of that contract between the Union and the AGC. It was further provided that Respondent agreed to become a party to and be bound by the terms and provisions of the agreements establishing the Carpenters Local No. 1098 welfare fund, its pension trust, and its educational and training program trust.<sup>2</sup>

At the time Respondent signed the memorandum agreement, the contract in effect between the Union and the AGC became effective May 1, 1974, and had an expiration date of April 30, 1976, with provisions for automatic renewal. The 1974 contract had been negotiated pursuant to section XXII.A, of the 1969

<sup>1</sup> The Baton Rouge Chapter of the Associated General Contractors of America, Inc., is composed of various employers engaged in the general contracting industry in and around the city of Baton Rouge, Louisiana, and exists partly for the purpose of representing its employer-members in negotiating collective-bargaining agreements with the Union.

<sup>2</sup> See Appendix B, attached hereto, for the full text of the memorandum agreement.

contract, entitled "Duration and Scope of Agreement." It provided:

This agreement shall become effective on April 1, 1969. It shall remain in full force and effect through March 31, 1972, the anniversary date hereof and from year to year thereafter unless either party, at least ninety (90) days prior to any anniversary date, notify the other party of its desire to modify or terminate same.

From on or about October 11, 1974, and continuing until on or about May 21, 1976, Respondent adhered to the terms and conditions of the 1974 agreement, and made contributions into the welfare, educational, and pension funds.

On January 16, 1976, the Union gave notice to the AGC, pursuant to section XXII,A, of the 1974 contract, that it wished to amend or terminate the agreement. Section XXII,A, of the 1974 agreement provided:

This Agreement shall become effective on May 1, 1974. It shall remain in full force and effect until midnight of April 30, 1976, and unless written notice be given by either party to the other at least ninety (90) days prior to such date of a desire for change herein or a desire to terminate the same, it shall continue in effect for an additional year thereafter. In the same manner, this agreement, with any amendments hereto, shall remain in effect from year to year thereafter, subject to termination at the expiration of any such contract year upon notice in writing given by either party to the other at least ninety (90) days prior to the expiration of such contract year. Any such notice as herein above provided for in this Article, whether specifying a desire to terminate or to change at the end of the current contract year, shall have the effect of terminating this agreement at such time.

On May 21, 1976, the Union and the AGC entered into a collective-bargaining agreement covering the period of May 1, 1976, to April 30, 1978. Commencing on or about May 22, 1976, Respondent has failed and refused to abide by the terms of the 1976 agreement, and has stopped contributing to the welfare, educational, and pension funds. Respondent at no time gave notice to or consulted with the Union with respect to these activities.

The General Counsel contends that Respondent, by signing the October 11, 1974, memorandum agreement, bound itself to successive collective-bargaining agreements between the AGC and the Union. It is further argued that Respondent delegated bargaining authority to the AGC and became a member of the multiemployer unit. The May 22, 1976, withdrawal from the multiemployer unit is, General Counsel argues, untimely since it occurred after the end of negotiations. Respondent, on the other hand, contends that the October 11, 1974, memorandum agreement bound it solely to the 1974 contract between the Union and the AGC, which by its own terms expired when the Union gave the AGC notice on January 16, 1976. It is Respondent's position that it was not bound to honor the 1976 contract between the Union and the AGC because the 1974 agreement had terminated and the Union did not request individual negotiations with Respondent for a new agreement.

We find that by signing the October 11, 1974, memorandum agreement Respondent expressed an intent to be bound by the results of all future negotiations between the Union and the AGC. In the absence of proper notice to the contrary, Respondent is therefore bound to the 1976 collective-bargaining agreement between the Union and the AGC.

The October 11, 1974, memorandum agreement stated that Respondent agreed to be bound by "any modifications, extensions, or renewals" of the 1969 agreement between the Union and the AGC. At the time Respondent signed the memorandum agreement, the 1974 agreement between the Union and the AGC was in effect and the parties implemented the terms of that agreement. By this action Respondent was clearly on notice that the bargaining relationship would be governed by subsequent modifications of the 1969 base agreement between the Union and the AGC. Indeed, had Respondent intended to be bound solely by the 1974 contract, it could have so stated in the memorandum agreement rather than agreeing, as it did, to be bound to the "modifications, extensions, or renewals" of the 1969 contract at a time when the 1974 contract was in effect. In this context, there can be no question that the memorandum agreement acknowledged a continuing bargaining relationship between the Union and the AGC and embodied an agreement by Respondent to be bound by the results of that relationship, including subsequent bargaining agreements such as the 1976 one here in issue.<sup>3</sup>

<sup>3</sup> In so concluding, we do not find that by signing the memorandum agreement Respondent became a member of the multiemployer unit. Respondent was not a member of the AGC. It had no prior history of group bargaining and did not participate in the negotiations between the AGC and the Union. In these circumstances, we find that the memorandum

agreement cannot be construed as an intention to delegate bargaining authority to the AGC or to be bound by group rather than by individual action. Rather we deem the memorandum agreement to be a separate contract between Respondent and the Union, wherein Respondent agrees to

(Continued)

Respondent contends, however, that, under section XXII.A, of the 1974 agreement, the Union's January 16, 1976, notice to the AGC resulted in a termination of the 1974 agreement and ended Respondent's obligation to honor the results of future negotiations between the AGC and the Union. We find no merit in this contention. The word "terminate" has a somewhat different meaning in labor contracts from that which it holds in other commercial contexts. The relationship between the employer and the bargaining representative is a continuing one. Where, as here, the Union's majority status is unchallenged, the law imposes a continuing duty on both parties to attempt in good faith to reach a new agreement when a collective-bargaining contract terminates. Hence, in labor parlance, and in the context of a continuing collective-bargaining relationship, the expression "termination" normally refers to the expiration date of an existing agreement. Thus, "termination" is not the cessation of relations, but the end of one agreement and the negotiation of a new one.<sup>4</sup> Here, as we found earlier, Respondent, in its memorandum agreement, agreed to be bound by the results of a continuing collective-bargaining relationship between the Union and the AGC. The Union's notice to the AGC did not constitute an end to this relationship. Rather, it merely signaled the termination of the terms set forth in the 1974 contract and the desire to negotiate new terms for the next 2-year period. In these circumstances, Respondent either continued to be bound by the results of the negotiations between the Union and the AGC, or was obligated to give proper notice to the Union<sup>5</sup> that it no longer intended to be so bound. Having failed to give any notice to the Union that it desired to cease giving effect to the memorandum agreement, Respondent is estopped from now asserting that it is not bound by the 1976 agreement.<sup>6</sup>

Accordingly, we find that by unilaterally failing and refusing to implement the existing collective-bargaining agreement between the Union and the AGC, Respondent refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act.

be individually bound by the results of the ongoing bargaining relationship between the Union and the AGC. It is on this basis alone that we reach our findings and conclusions herein.

<sup>4</sup> *South Texas Chapter, Associated General Contractors*, 190 NLRB 383, 385 386 (1971).

<sup>5</sup> Inasmuch as the memorandum agreement did not contain an expiration date or express provisions regarding its termination, it is necessary to determine how an end to that agreement could be achieved by the parties. We find that the memorandum agreement by its terms incorporates the provisions of the 1969 agreement, and successor agreements modifying it, including the 1974 agreement which then was effective. Hence, we further find that Respondent was obligated to give notice to the

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section I, above, occurring in connection with Respondent's operations described in section III, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent violated Section 8(a)(1) and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act. We shall order that Respondent rescind and revoke its unlawful refusal to implement the terms and conditions of employment for the unit employees contained in the 1976 agreement between the Union and the AGC; to give retroactive effect to the terms and conditions of employment for the unit employees as contained in the 1976 agreement from the date of Respondent's unlawful refusal to implement the agreement on May 22, 1976; to make whole the employees in the unit found appropriate herein for any loss of wages or other benefits which they may have sustained as a result of Respondent's unlawful conduct; to make whole the employees in the unit found appropriate herein by paying all welfare, educational, and pension fund benefits as provided in the 1976 agreement, which have not been paid and which would have been paid absent Respondent's unlawful discontinuance of such payments; and to post the attached notice. Backpay and interest thereon shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>7</sup> Respondent will be required to preserve and, upon request, make available to authorized agents of the Board all records necessary or useful in computing the amount of backpay due or in determining compliance with this Order.

Union at least 90 days prior to the desired date for termination of the memorandum agreement, in accordance with the provisions of the incorporated 1974 contract. By the same token, had the Union desired to terminate the memorandum agreement with Respondent and negotiate a separate 1976 contract, it would have been obligated to give at least 90 days' notice to Respondent of the proposed termination date. Note that in so finding we reject any construction of our holding that such notice of termination could be by termination of the AGC-Union bargaining agreements.

<sup>6</sup> Cf. *Marquis Elevator Company, Inc.*, 217 NLRB 461 (1975).

<sup>7</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ted Hicks and Associates, Inc., Baker, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with the United Brotherhood of Carpenters and Joiners of America, Local 1098, by failing and refusing to give full effect to and comply with the collective-bargaining agreement between the United Brotherhood of Carpenters and Joiners of America, Local 1098, and the Baton Rouge Chapter, Associated General Contractors of America, Inc., effective May 1, 1976, with respect to the employees in the following appropriate unit:

All carpenters employed by Respondent on its construction projects located within the territorial jurisdiction of the Union, excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Restore and place in effect all terms and conditions of employment as provided in the above-named agreement which Respondent failed and refused to implement.

(b) Make such welfare, educational, and pension fund payments on behalf of those employees in the above unit for whom such contributions were previously made and would have continued to be made had Respondent not unlawfully refused to honor the above collective-bargaining agreement.

(c) Make whole all of its employees for any loss of wages or other benefits that they may have suffered as a result of Respondent's unlawful refusal to bargain with the Union in the manner prescribed in the remedy section of this Decision.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Baker, Louisiana, copies of the attached notice marked "Appendix A."<sup>8</sup> Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by it

immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>8</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX A

## NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

WE WILL NOT refuse to bargain with the United Brotherhood of Carpenters and Joiners of America, Local 1098, by refusing to give effect to and to comply fully with the collective-bargaining agreement between the United Brotherhood of Carpenters and Joiners of America, Local 1098, and the Baton Rouge Chapter, Associated General Contractors of America, Inc., with respect to our employees in the following appropriate unit:

All carpenters employed by Respondent Company on its construction projects located within the territorial jurisdiction of the Union, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL restore and place into effect all terms and conditions of employment of the above collective-bargaining agreement which we refused to implement.

WE WILL make such welfare, educational, and pension fund payments on behalf of those employees in the above unit for whom such contributions were previously made and would have continued to be made had we not unlawfully refused to honor the above collective-bargaining agreement.

WE WILL make whole all our employees for any loss of wages or other benefits that they may have sustained as a result of our unlawful refusal to bargain with the Union, plus interest thereon.

TED HICKS AND  
ASSOCIATES, INC.

#### APPENDIX B

The full text of the October 11, 1974, memorandum agreement is as follows:

#### MEMORANDUM AGREEMENT

This Agreement is made by and among the undersigned, hereinafter called "EMPLOYER," "UNION," or "TRUST(S)," as the case may be

1. EMPLOYER and UNION agree to comply with, abide by, and be bound by all of the provisions of the collective-bargaining agreement heretofore entered into between the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1098 and the BATON ROUGE CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., dated March 28, 1969, and any modifications, extensions, or renewals thereof with the same force and effect as though the said collective bargaining agreement was set forth here in full.

2. EMPLOYER agrees to become a party to and be bound by all the terms and provisions of the agreements establishing:

a. CARPENTERS LOCAL NO. 1098 WELFARE FUND, being that Agreement and Declaration of Trust dated August 1, 1969,

b. CARPENTERS LOCAL 1098 PENSION TRUST, being that Agreement and Declaration of Trust dated March 31, 1970,

c. LOCAL 1098 EDUCATIONAL AND TRAINING PROGRAM TRUST, being that Agreement and Declaration of Trust dated April 30, 1970,

with the same force and effect as though the agreements were set forth here in full. Without in anywise limiting the generality of the foregoing, EMPLOYER does irrevocably designate and appoint the employers mentioned in the various Trust Agreements as its attorneys in fact for the selection, removal, and substitution of Trustees as provided in said agreement(s) and does hereby agree to make payments covering all of his employees as required by the collective bargaining agreement and the agreements establishing said trusts and does hereby ratify, approve and consent to all matters heretofore done in connection with the creation and administration of such trusts.

3. TRUST(S) agree(s) that EMPLOYER is granted the right to participate in said agreement(s), subject to all the terms and conditions thereof, with the same effect as though he were originally a party thereto.

Signed at Baton Rouge, Louisiana, this 11 day of October, 1974.

#### UNION SIGNATORY

UNITED BROTHERHOOD OF  
CARPENTERS & JOINERS  
OF AMERICA, LOCAL UNION  
NO. 1098

#### TRUST(S)

CARPENTERS LOCAL  
UNION NO. 1098  
WELFARE FUND

#### EMPLOYER

TED HICKS & ASSOCIATES  
FIRM NAME

MAILING ADDRESS OF FIRM